

REMARKS/ARGUMENTS

Applicant responds herein to the Office Action dated August 21, 2007. A Petition for Extension of Time (one month) and the fee therefor are submitted herewith.

Claims 1-15 are pending in the instant application.

Amendments to the Claims

As amended above, independent claim 1 recites “an anchor section which removably anchors the first and second catheters to each other,” previously recited in claim 2. This feature has been stricken from claim 2. Independent claim 6 recites “an anchor means for removably anchoring the first and second catheters to each other,” previously recited in claim 7. This feature has been stricken from claim 7.

Claim 11 is amended to replace the step of setting a tube in the conduit of the catheter with “removably anchoring” a tube in the conduit of the catheter. This amendment is supported generally throughout the original specification as filed, for example at p. 7, line 21 – p. 8, line 17, among other places. No new matter has been added.

New claims 12-13 are presented. Claims 12-13 depend from claims 1 and 6, respectively, and recite “the first and second catheters being fixed to one another in a predetermined position having the elbow section of the first catheter extending distally of the second catheter.” This feature is fully supported in the original specification as filed, for example at p. 7, line 21 – p. 8, line 17, and Fig. 1, among other places. No new matter has been added.

Oath/Declaration

Regarding the objection to the Declaration filed, submitted herewith is an amended Declaration which we submit is in compliance with 37 C.F.R. §1.67(a). Accordingly, withdrawal of this objection is respectfully requested.

Information Disclosure Statement

The Office Action indicate that the Japanese Language reference "Lung Cancer", Japanese Journal of Clinical Radiology, Vol. 41, No. 13, 1996, was not considered because “the list may not be incorporated into the specification, but must be listed in a separate paper.” Office

Action, p. 2. Applicant respectfully submits that the list of references was on a separate paper, i.e., Form PTO-1449. The basis of the objection appears to be that the statement of relevance of the reference, 37 C.F.R. § 1.98(a)(3)(i), was not also on a separate paper. Applicant respectfully submits that this is not required by the applicable rules. Applicant's statement of relevance of the reference was, however, set forth at pp. 1-2 of the specification, "Description of the Related Art".

Notwithstanding, submitted concurrently herewith is a supplemental IDS, again listing the "Lung Cancer" reference, and including on a separate paper the explanation of the relevance of that reference which will be seen as identical to the explanation set forth in the specification. Applicant kindly requests that the reference be made of record and considered in the present application.

Rejection under 35 U.S.C. § 102

Claims 1-3 and 6-8 are rejected under 35 U.S.C. § 102(e) as anticipated by Kalloo, *et al.* (2001/0049497). Applicant respectfully traverses the rejection.

As amended above, independent claim 1 recites "[A]n anchor section which removably anchors the first and second catheters to each other." As amended above, independent claim 6 recites "[A]nchor means for removably anchoring the first and second catheters to each other." The Office Action alleges that these features are present in Kalloo, stating "[S]ome type of anchor section removably anchors the first and second catheters to each other since the overtube 10 of Kalloo provides a sterile pathway then each tie the endoscope is used the overtube must be removed and either re-sterilized or replaced with a new overtube." (Office Action, p. 3) Applicant respectfully disagrees.

Kalloo discloses a method and device for accessing the peritoneal cavity via the wall of the digestive tract with the use of a flexible endoscope. (Abstract) According to Kalloo, overtube 10 provides a sterile passage for an endoscope isolated from the interior of the digestive tract. (Para. [0028]) However, rather than being anchored to one another as recited in claims 1 and 6, Kalloo's overtube (10) and endoscope (40) are slidable relative to one another. Particularly once the overtube has been anchored to the gastric wall (36), "Endoscope 40 may be advanced beyond the distal end of the overtube as shown in FIG. 12." (Para. [0048]) "Once the intra-abdominal procedure has been completed, the endoscope 40 is retracted into the overtube

10.” (Para. [0050]) Compare Fig. 12, having the endoscope distally extended beyond the overtube, with Fig. 6, having the endoscope retracted prior to penetration of the gastric wall.

Therefore, it is not the case that Kalloo inherently has ‘some type of anchor section’ as speculated by the Office Action. Rather, Kalloo teaches that to be effective for its disclosed purpose, the endoscope and the overtube must freely move with respect to one another. Not only does Kalloo fail to teach the structure attributed to it, it actively teaches away from such an anchor structure. “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company et al.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir., 1984). Therefore, Applicant respectfully submits that claims 1 and 6 are patentably distinguished over Kalloo.

Claims 2-5 and 7-11 each depend, either directly or indirectly, from one of independent claims 1 and 6, respectively. These claims are each separately patentable, but in the interest of brevity are offered as patentable for at least the same reasons as their underlying independent base claims, the features of which are incorporated by reference. Favorable reconsideration and withdrawal of the rejection is kindly requested.

Rejection under 35 U.S.C. § 103

Claims 4-5 and 9-10 are rejected under 35 U.S.C. § 103(a) as obvious over Kalloo as applied to claims 1 and 6, in view of King (5,702,365). Applicant respectfully traverses the rejection.

King is offered for its teaching of a dual-lumen blood-treatment catheter having a plurality of slits around a circumference of the outer lumen which form slats therebetween, such that withdrawal of the inner lumen relative to the outer lumen causes the slits to open, thereby bowing the slats to expand the outer lumen. (Abstract)

Even presuming that King teaches all that is attributed to it, and that there exists some apparent reason for one of ordinary skill in the art to combine the references as proposed in the Office Action, King taken singly or in combination with Kalloo, offers no teaching or suggestion to ameliorate the deficiencies of Kalloo relative to independent claims 1 and 6. It has been held by the courts that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ

580 (CCPA 1974). Therefore, Applicant respectfully submits that claims 4-5 and 9-10 are patentably distinguished over Kalloo and King, taken singly or in combination. Applicant kindly requests favorable reconsideration and withdrawal of the rejection.

Claim 11 is rejected under 35 USC § 103(a) as obvious over Kalloo in view of King, and further in view of Urick, *et al.* (6,676,590). Urick is offered for its teaching of a catheter system having a tubular radiation source.

As amended above, independent claim 11 recites

A method of guiding a tube, which leads a radiation source into a living body cavity, into the body cavity through a conduit of a catheter so that the radiation source administers radiation therapy to the interior of the body cavity, comprising:
a step of removably anchoring a tube in the conduit of the catheter...

As noted above with respect to Kalloo and King, neither of these references teaches or suggests anchoring the first and second catheters to one another. Urick does not offer, nor is it alleged to offer, any teaching or suggestion of this feature of claim 11. Therefore, Applicant respectfully submits that claim 11 is patentably distinguished over Kalloo, King and Urick, taken singly or in combination. Applicant kindly requests favorable reconsideration and withdrawal of the rejection.

New Claims

Claims 12-13 each recite “the first and second catheters being removably anchored to one another in a predetermined position having the elbow section of the first catheter extending distally of the second catheter.” This feature is neither taught nor suggested by any of the applied references, taken singly or in combination. As noted above with respect to Kalloo, the endoscope (40) is slidably held by the overtube (10) with the distal end of the endoscope proximal of the distal end of the overtube. The remainder of the applied references do not speak to this feature recited in claims 12-13. Therefore, Applicant respectfully submits that claims 12-13 are each separately patentable over claims 1 and 6, and further distinguished over the applied references, taken singly or in any combination.

Conclusion

In light of the foregoing, Applicant respectfully submits that all claims are patentable, and kindly solicits and early and favorable Notice of Allowability.

Accordingly, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

THIS CORRESPONDENCE IS BEING
SUBMITTED ELECTRONICALLY
THROUGH THE UNITED STATES
PATENT AND TRADEMARK OFFICE
EFS FILING SYSTEM
ON DECEMBER 20, 2007

Respectfully submitted,



MAX MOSKOWITZ
Registration No.: 30,576
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700